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S/1997/174
28 February 1997

ORIGINAL: ENGLISH

LETTER DATED 28 FEBRUARY 1997 FROM THE CHARGE D'AFFAIRES A.I.
OF THE PERMANENT MISSION OF YUGOSLAVIA TO THE UNITED NATIONS
ADDRESSED TO THE PRESIDENT

I have the honour to enclose herewith a copy of the Agreement on Special Parallel Relations between the Federal Republic of Yugoslavia and Republika Srpska, concluded in Belgrade on 28 February 1997.

I should be grateful if you would kindly circulate the present letter and its annex as a document of the Security Council.

(Signed) Vladislav JOVANOVIĆ
Chargé d'affaires a.i.

97-05357 (E) 030397 040397

Annex

Agreement on Special Parallel Relations between the Federal Republic of Yugoslavia and Republika Srpska

Concluded between the Federal Republic of Yugoslavia, on the one hand, and Republika Srpska, on the other, in Belgrade on 28 February 1997.

The Federal Republic of Yugoslavia and Republika Srpska,

Guided by the principles of the Dayton/Paris Agreement on Peace in Bosnia and Herzegovina, the principles and purposes of the Charter of the United Nations and the Paris Charter,

Inspired by the centuries-long interests of the Serbian people to develop in peace, stability, understanding and equality with other peoples of the region and Europe,

Firmly committed to strengthening mutual ties and promoting democracy, peace, freedom and respect for human rights and freedoms,

Determined to contribute to understanding among peoples and good-neighbourliness in the region,

Convinced that continued efforts to promote the rule of law and mutual cooperation are needed to achieve that goal.

Have agreed as follows:

Article 1

The Federal Republic of Yugoslavia and Republika Srpska (thereinafter - the Parties), confirm their determination to promote their relations on the basis of friendship, confidence, cooperation and respect for mutual interest, in accordance with the principles of independence, non-interference into internal affairs, equality and respect for human rights and fundamental freedoms.

Article 2

The Parties confirm their opposition to the use or threat of use of force in international relations and their firm support to the resolution of international conflicts and disputes by peaceful means.
In their overall relations and cooperation, the Parties shall be guided by the goals of peace, stability and progress for all peoples and States on the basis of equality, democracy and market economy.

Article 3

By the development of their relations, the Parties shall contribute to the fostering of international cooperation and understanding and will invest joint efforts with a view to strengthening the role of the United Nations in the preservation and promotion of international peace and security.

Article 4

The Parties confirm their full commitment to and respect for the international standards and obligations in the field of human rights and fundamental freedoms, and are ready to cooperate in resolving international humanitarian problems.

Article 5

A Council for Cooperation shall be set up (thereinafter "Council").

The President of the Council is the President of the Federal Republic of Yugoslavia and the Vice-President is the President from Republika Srpska in the Presidency of Bosnia and Herzegovina.

The Council shall consist of 7 (seven) members - 3 (three) appointed by the President and 2 (two) by the Vice-President of the Council.

Article 6

The Council shall encourage, plan and harmonize comprehensive cooperation particularly in the fields of:

- establishment of special parallel relations;
- culture, education, science, technology, information, sports and other fields of human creativity;
- economic development and progressive linking of production, trade, energy and infrastructure, finance with a view to creating a single market;
- economic renewal, reconstruction, and development;
- transport, traffic and communications;
- production, exploitation and transmission of energy;
- tourism and protection of the environment;
- social policies, health-care protection;
- prevention of natural disasters and the elimination of consequences thereof;
- cooperation of non-governmental organizations;
- migrations, immigrations and asylum;
- combatting terrorism, illegal drug trafficking, arms smuggling, money laundering, threats to civilian air traffic and all other forms of organized crime;
- regional security;
- State border crossing regime;
- citizenship;

- harmonization of foreign policies and approach to third countries and international organizations;
- harmonization of legal and other regulations, extension of legal assistance;
- resolution of succession issues of the former Socialist Federal Republic of Yugoslavia,
- in other fields of mutual interest for the Parties.

With a view to realizing efficient cooperation in the said fields, as well as the goals and provisions of this Agreement, the Parties may conclude specific agreements.

Article 7

The Council shall meet as may be necessary, at least once in three months.

The Governments of the Parties shall review the initiatives, recommendations and conclusions of the Council within fifteen (15) days.

In cases which pose a threat or danger to international peace and security, the Council shall be obliged to meet.

The Council may set up working bodies to carry out certain tasks or for certain fields of cooperation, if it deems it necessary.

Article 8

The Parties shall, as soon as possible, proceed with the activities to establish special parallel relations for the prosperity of their people and citizens and the creation of stable conditions for development, taking into account the sovereignty and territorial integrity of Bosnia and Herzegovina and the Federal Republic of Yugoslavia respectively.

Article 9

The Parties shall not allow the use of their territories for aggression against the other Party.
The Parties hereby undertake not to extend any military or any other assistance to an aggressor or aggressors in case one of the Parties is exposed to armed attack by a third Party or Parties.
In case of such an attack, the Parties shall, with a view to containing the aggression and eliminating its consequences, invest all efforts in accordance with the Charter of the United Nations and use all possibilities envisaged by the United Nations and other international organizations and arrangements.
The parties shall regulate more precisely the terms and modalities of cooperation in the field of regional security through a separate agreement.

Article 10

The Parties shall particularly encourage joint investments in economy, transfer of technologies, infrastructure links, joint access to third markets and shall create appropriate conditions to achieve that end by regulations, economic policies, standardization and mutual contractual relations.

Article 11

With a view to promoting economic cooperation, the Parties shall set up a Joint Inter-Governmental Commission.

Article 12

The Parties are committed to the principle of free movement of people, goods, capital and cultural, information and other values.
The citizens of the Parties shall not be required to obtain visas and pay taxes to cross the border. The customs authorities shall cooperate in facilitating cross-border movement of goods, as well as in preventing customs violations.

Article 13

The Parties shall promote the development of contacts and cooperation between their Parliaments, as well as regional and local authorities and institutions.
They shall encourage the cooperation between their youth organizations, trade unions, educational and sports institutions, expert, humanitarian and other social organizations.

Article 14

This Agreement shall be subject to ratification by the Federal Assembly of the Federal Republic of Yugoslavia and the Parliamentary Assembly of Bosnia and Herzegovina pursuant to their constitutional provisions.

In witness whereof, the undersigned signed and affixed their seals to this Agreement, made in 3 (three) identical copies at Belgrade on 28 February 1997.

For the Federal Republic of Yugoslavia

Zoran Lilić
President of the Federal Republic of Yugoslavia

For Republika Srpska

Momčilo Krajišnik
President from Republika Srpska
in the Presidency of Bosnia and Herzegovina

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GENERAL ASSEMBLY
Fifty-first session
Agenda items 33, 35, and 85
THE SITUATION IN THE MIDDLE EAST
QUESTION OF PALESTINE
REPORT OF THE SPECIAL COMMITTEE TO
INVESTIGATE ISRAELI PRACTICES
AFFECTING THE HUMAN RIGHTS OF THE
PALESTINIAN PEOPLE AND OTHER
ARABS OF THE OCCUPIED TERRITORIES

SECURITY COUNCIL
Fifty-second year

Identical letters dated 3 March 1997 from the Permanent Representative of Qatar to the United Nations addressed to the Secretary-General and the President of the Security Council

In my capacity as Chairman of the Arab Group for the month of March 1997, I have the honour to transmit to you herewith the text of a statement concerning the expansion of Israeli settlements on occupied Arab land (Jerusalem) issued by the Council of the League of Arab States at its resumed extraordinary session on 1 March 1997.

I should be grateful if you would have the text of this letter and its annex distributed as a document of the fifty-first session of the General Assembly, under agenda items 33, 35 and 85, and of the Security Council.

(Signed) Nasser bin Hamad AL-KHALIFA
Ambassador
Permanent Representative
Chairman of the Arab Group

ANNEX

Statement issued on 1 March 1997 by the League of Arab States

The Council of the League of Arab States, at its meeting on Saturday, 1 March 1997 of the resumed extraordinary session convened on 1 December 1996 to study the expansion of Israeli settlements on occupied Arab land,

Having heard the important statements made on the issue by His Excellency Mr. Yasser Arafat, President of the State of Palestine, the Secretary-General of the League of Arab States, and the President of the session (the Ambassador of the People's Democratic Republic of Algeria),

Having considered the decision taken by the Israeli Government on 26 February 1997 to build a Jewish residential neighbourhood on Jabal Abu Ghneim, south of Arab Jerusalem, a step which is considered a blatant violation of the principles on which the peace process was based and of all international laws and resolutions, in particular Security Council resolutions 242 (1967), 252 (1968) and 338 (1973) which emphasized the inadmissibility of the acquisition of territory by force and considered that all measures and actions taken by Israel, including expropriation of land and properties thereon, which tend to change the legal status of Jerusalem are invalid and cannot change that status,

The Council strongly condemns these Israeli measures, which it considers to be inconsistent with the principles on which the peace process was based, the spirit and the letter of the peace accords signed with the Palestinian side, and the United States letters of guarantee given to the Arab parties at the Madrid Peace Conference;

The Council regards this and other Israeli decisions as a violation of international laws and resolutions and a threat to the peace process that could plunge the region once again into struggle, tension and instability;

The Council recalls the resolutions adopted by Arab Summit Conferences, particularly the most recent Conference held in Cairo, which reaffirmed the commitment to a just, comprehensive and lasting peace, based on legitimate international resolutions and the principle of land for peace, in view of the fact that peace is a strategic choice for the Arab community of nations. The Israeli Government's decision to build on Jabal Abu Ghneim, or on any occupied Arab land, will put dangerous obstacles in the path of the peace process. The Israeli Government should revoke this decision, thereby helping to build confidence between the parties to the peace process. In this context, the Council calls upon the United Nations and all its relevant organs, particularly the Security Council, to take decisive action and urge Israel to revoke its decision and halt all settlement activity;

The Council commends the international community, which has widely criticized this oppressive Israeli decision, and expresses its great appreciation to all the States which have affirmed their respect for legitimate international resolutions and criticized and condemned the Israeli decision.

Foremost among these are the European Union and the sponsors of the peace process, China, Japan, the countries of the Organization of the Islamic Conference and the countries of the Non-Aligned Movement. The Council urgently requests all States of the world to move quickly and effectively to halt the expansion of Israeli settlements on and fragmentation of occupied Arab land and to put pressure on Israel not to alter the demographic and geographical character of the city of Jerusalem. The Council expects the United States of America to play an effective role in order to save all aspects of the peace-process and halt Israeli settlement on occupied Arab land;

The Council urges countries which provide Israel with financial or economic assistance to halt such assistance, since Israel uses it to implement its plans for settlements on occupied Arab land;

The Council affirms its complete solidarity with the Palestinian people and calls for its resistance to be strengthened and supported by every means, particularly through Arab funds, in order to enable it to withstand expropriation and settlement;

The Council commends the Islamic-Christian position, which is working hard to preserve the spiritual and cultural character of the city of Jerusalem and to halt Israeli violations of international resolutions and agreements and Israeli practices that threaten peace and security not only in the Middle East region, but throughout the world;

The Council decides to remain seized of the matter and to request the Secretary-General to follow developments in this field.

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S/1997/176
3 March 1997

ORIGINAL: ENGLISH

LETTER DATED 3 MARCH 1997 FROM THE PERMANENT REPRESENTATIVE OF THE LIBYAN ARAB JAMAHIRIYA TO THE UNITED NATIONS ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

I have the honour to enclose herewith the Declaration of the sixty-fifth ordinary session of the Council of Ministers of the Organization of African Unity, which took place at Tripoli from 24 to 28 February 1997, concerning the dispute between the Libyan Arab Jamahiriya and the United States of America, the United Kingdom of Great Britain and Northern Ireland and France.

I should be most grateful if you would have the present letter and its annex circulated as a document of the Security Council.

(Signed) Mohamed A. AZWAI
Permanent Representative of
the Libyan Arab Jamahiriya
to the United Nations

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Annex

[Original: Arabic and English]

Declaration of the sixty-fifth ordinary session of the Council of Ministers of the Organization of African Unity on the dispute between the Libyan Arab Jamahiriya and the United States of America, the United Kingdom of Great Britain and Northern Ireland and France

1. The Council of Ministers of the Organization of African Unity, meeting in its sixty-fifth ordinary session, at Tripoli, from 24 to 28 February 1997, exhaustively discussed the dispute between the Libyan Arab Jamahiriya on the one hand, and the United States of America, the United Kingdom of Great Britain and Northern Ireland and France, on the other. In examining this problem, the Council of Ministers was guided by the principles enshrined in the Charters of the United Nations and the Organization of African Unity (OAU), respectively, requiring Member States to settle their differences by peaceful means, through dialogue, negotiation and legal procedures, and to respect the independence of all Member States and refrain from any threats to their sovereignty and territorial integrity and the security of their nationals.

2. After considering the reports of the Secretary-General and the OAU Ministerial Committee on the dispute, the Council of Ministers once more took note of the fact that the Libyan Arab Jamahiriya had fully met the requirements demanded by the Security Council in its resolution 731 (1992). As a matter of fact, Libya had unequivocally condemned terrorism in all its forms, as well as all those perpetrating or encouraging it, and had made clear its readiness to give all necessary cooperation to the international community with a view to eradicating that heinous phenomenon. However, Libya had found it impossible to extradite its two nationals allegedly implicated in the bombing over Lockerbie in 1988.

3. The Council of Ministers, whose delegations have been living witnesses to the suffering of the people of Libya caused by the embargo imposed on the country in application of Security Council resolutions 748 (1992) and 883 (1993), expresses its deep concern at the human and material deprivations to which the Libyan people have been subjected. The Council of Ministers wishes to emphasize that these obnoxious sanctions affect not only the Libyan people, but also the neighbouring countries, as well as African workers from other countries of the continent.

4. The Council of Ministers has been informed once again that the Libyan Arab Jamahiriya is willing to cooperate fully in any regional or international effort aimed at resolving the crisis. In this connection, the Council of Ministers takes note of the fact that the Government of Libya has accepted the initiative of the League of Arab States, supported by OAU, the Movement of Non-Aligned Countries and the Organization of the Islamic Conference, to the effect that the two Libyan suspects be given a just and fair trial by Scottish judges and according to Scottish law at the headquarters of the International Court of Justice. The Council of Ministers remains convinced that this initiative, if

accepted, constitutes a practical solution and should guarantee a just and fair trial whereby the interests of the concerned parties would be taken into account. Indeed, the objective of resolution 731 (1992) is not to violate the sovereignty of Libya but rather to serve the cause of justice and reveal the truth. The Council of Ministers strongly deplores the fact that the three concerned Western countries have thus far shown indifference to the initiatives presented to them with a view to a just and equitable solution to the crisis. This has led to an impasse and, as a result, kept the entire people of Libya hostage for five years.

5. In its search for a just and urgent solution to the conflict, in close cooperation with the League of Arab States, the Council of Ministers strongly recommends that the Security Council consider the ways and means for a rapid resolution of the crisis, and to this end, submits for consideration the following recommendations adopted jointly with the League of Arab States:

Option 1 Hold the trial of the two suspects in a third and neutral country to be determined by the Security Council.

Option 2 Have the two suspects tried by Scottish judges at the International Court of Justice (ICJ) at The Hague, in accordance with Scottish law.

Option 3 Establish a special criminal tribunal at ICJ headquarters at The Hague to try the two suspects.

6. The Council of Ministers calls on the Security Council to accept one of the proposed options, thereby facilitating the speedy and definitive resolution of the dispute. In the same vein, the Council of Ministers appeals to the Security Council to lift the sanctions imposed on the Libyan Arab Jamahiriya. This has become even more imperative as the sanctions are having an increasingly devastating effect on the people of Libya, as well as on the country's economy. In this connection, the Council of Ministers wishes to reiterate its position expressed at its sixty-fourth ordinary session, held at Yaoundé from 1 to 6 July to the effect that continued imposition of sanctions might lead African countries to devise other means of sparing the Libyan people future suffering. In this respect, the Council of Ministers mandates the Secretary-General of OAU to prepare a practical plan of action to be considered for implementation, on the occasion of the thirty-third ordinary session of the Assembly of the Heads of State and Government of OAU, to be held at Harare in June 1997.

7. The Council of Ministers commends the efforts made by the two Committees set up by OAU and by the League of Arab States on the dispute and encourages them to continue to coordinate their efforts and initiatives to find a just and peaceful solution to the crisis.

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Agenda item 33
THE SITUATION IN THE MIDDLE EAST

SECURITY COUNCIL
Fifty-second year

Letter dated 3 March 1997 from the Chargé d'affaires a.i. of the Permanent Mission of Israel to the United Nations addressed to the Secretary-General

I have the honour to refer to the letter dated 31 January 1997 (A/51/792-S/1997/100) from the Palestinian Permanent Observer to the United Nations transmitting the text of a communiqué issued by the Palestinian leadership.

This Palestinian communiqué refers to a number of issues that are currently under ongoing joint attention by both the Palestinians and Israel. It is notable that many of the issues raised in the communiqué had already been resolved, or were in the process of being resolved, even before the distribution of the document.

Israel feels that such outstanding issues can and should be settled directly between the two sides and only through the agreed channels. Attempts to politicize these issues and invite international pressure can only damage the trust between the parties and be counterproductive. Accordingly, despite the many inaccuracies in the communiqué, Israel does not propose to debate its differences in the international arena, but rather calls on the international community to encourage the Palestinian side to raise and resolve outstanding issues face to face with Israel. For its part, Israel proposes to raise its own concerns regarding Palestinian compliance with its obligations vis-à-vis Israel directly with the Palestinian side in the appropriate forums set for this purpose.

Finally, I would express particular concern at the threat contained in the communiqué that if Palestinian demands are not met this will return "the peoples of the region to their former positions of confrontation and struggle". The current peace process is based on the resolution of differences by peaceful means and the renunciation of violence. Veiled threats of violence such as those contained in the Palestinian communiqué undermine the foundations of

dialogue and damage the prospects of progress in negotiations between the two sides.

I should be grateful if you would arrange to have the text of the present letter circulated as a document of the fifty-first session of the General Assembly, under agenda item 33, and of the Security Council.

(Signed) David PELEG
Ambassador
Chargé d'affaires a.i.

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LETTER DATED 3 MARCH 1997 FROM THE PERMANENT REPRESENTATIVE OF RWANDA TO THE UNITED NATIONS ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

I have the honour to transmit the text of a memorandum addressed by the Government of Rwanda to the Special Representative of the United Nations Secretary-General for the Great Lakes Region, Mr. Mohammed Sahnoun.

The purpose of the memorandum is to enable the Special Representative and Council members to have a better understanding of the underlying causes of the crisis in eastern Zaire in the search for appropriate solutions to Zaire's internal crisis.

I should be grateful if you would have the present letter and its annex circulated as a document of the Security Council.

(Signed) Gideon KAYINAMURA
Ambassador
Permanent Representative
of Rwanda to the United Nations

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Annex

[Original: French]

Memorandum dated 19 February 1997 on the crisis in eastern Zaire, addressed to Mr. Mohammed Sahnoun, Special Representative of the United Nations and the Organization of African Unity for the Great Lakes region, on the occasion of his visit to Rwanda

Since September 1996, Zaire has been the scene of a civil war between the Alliance of Democratic Forces for the Liberation of Congo-Zaire and the Mobutu regime. This war, which began in South Kivu, has now engulfed Haut-Zaire, having encompassed North Kivu, and it is now spreading to northern Shaba, in the Kalémie and Moba region.

As often happens in such cases, the sensational has overshadowed analysis, and very few international newspapers are paying any attention to the real causes of this conflict.

Both parties to the conflict, moreover, have actively engaged in a certain amount of propaganda. The aim of this propaganda is to propound a version of events that covers up the responsibility of the Kinshasa authorities for the origins of the current war. In pursuit of that aim, the Government of Zaire is seeking scapegoats in the form of neighbouring countries, such as Rwanda.

For anyone who has paid the least bit of attention to developments in the situation, however, it is decidedly difficult to gloss over the motives that have given rise to this conflict. These motives are, moreover, too recent to be dismissed with the stroke of a pen. They include the extension of the Rwandan genocide into eastern Zaire, the arbitrary withdrawal from some inhabitants of Zaire of their right to their nationality, and the attempt to drive those inhabitants from their land.

Above and beyond this internal crisis in Zaire, there is a serious moral and legal problem with respect to the refugee status that has been improperly accorded to the criminal perpetrators of genocide.

I. ACTS OF GENOCIDE, THE BASIS OF THE ZAIRIAN CRISIS

In early 1996, the international media regularly reported on the ongoing tragedy in eastern Zaire. It all started in North Kivu, where militiamen and ex-soldiers of the regime in power in Rwanda before July 1994, perpetrators of genocide, were plundering, ill-treating and massacring Zairian citizens, while the Kinshasa authorities stood idly by. Worse yet, the criminal perpetrators of genocide benefited here and there from the complicity and even the assistance of Zairian military personnel and local civilian authorities. The main targets in these tragic events were a group of Kinyarwanda-speaking Zairians and members of other tribes who tried to hide their neighbours and compatriots who were threatened with death and extermination.

As early as March 1996, the Government of Rwanda was beginning to receive in its territory waves of Zairian refugees fleeing the massacres at Rutshuru and Masisi in North Kivu.

At the time, diplomats accredited to Kigali witnessed the influx of refugees, who reported cases of torture and inhuman massacres perpetrated by Rwandan ex-soldiers and militiamen. The refugees had been witnesses to scenes in which, inter alia, people were burned alive. Rwanda and certain newsmedia have since then repeatedly condemned these acts of genocide. Unfortunately, however, these incidents did not receive in time all the attention they deserved from the international community.

The United Nations Commission on Human Rights, however, has looked seriously into this problem. At the same time, it has condemned the involvement of local authorities and Zairian military personnel in the above-mentioned acts of genocide (report of the Commission issued on 16 September 1996). But before that date, the customary chiefs in North Kivu representing the Hunde, Nande, Nyanga and Havu groups had expressed their deep outrage at these events. In a letter addressed to the Zairian authorities, the chiefs expressed surprise that their peoples were no longer receiving protection from those whose responsibility it was to provide such protection. The letter expressing the indignation of the customary chiefs was published in early August 1996 by the Zairian Press Agency (AZAP). To our knowledge, AZAP is an official agency of the Kinshasa Government.

Was it through corruption that the Rwandese militiamen and ex-soldiers managed to obtain the complicity and assistance of the Zairian authorities in spreading to eastern Zaire the genocide that had taken place in Rwanda in 1994? Did the two parties have something in common against a group of Kinyarwanda-speaking Zairians or was their cause coupled with corruption?

Whatever the reasons for this tragedy, it is still surprising, to say the least, that the Zairian State should, in its own territory, share such a responsibility with the criminal perpetrators of the Rwandan genocide.

Embarrassed by the turn of events since February 1996, some Zairian authorities have now taken to seeking scapegoats outside the country. That is why they are trying to trump up charges of involvement on the part of neighbouring countries, including Rwanda, in a conflict which is strictly between Zairians.

II. WHEN ZAIRE WITHDRAWS ITS CITIZENS' RIGHT TO THEIR NATIONALITY

In their attempt to deny the domestic nature of the crisis, the Kinshasa authorities unwittingly provide proof of their real responsibility. For they have taken the liberty of obliterating, in a fit of who knows what kind of absent-mindedness or irresponsibility, the centuries-old history of a part of their population. Do they not describe the Banyamulenge of South Kivu as refugees who they allege came from Rwanda in 1961? Those are the very terms

used by Zaire's Prime Minister Mr. Léon Kengo wa Dondo in addressing the French-African summit meeting held on 4 and 5 December 1996 in Ouagadougou.

Such language does not differ much from that used by the present deputy Prime Minister and Minister for Foreign Affairs of Zaire, Mr. Gérard Kamanda wa Kamanda, when he was Minister of the Interior. It is precisely what he stated in his memorandum of 29 October 1996 addressed to the United Nations Security Council. In that document, Mr. Kamanda wa Kamanda depicts the Banyamulenge as arriving in the territory where they now live in 1924, and not in the sixteenth century as he himself had underlined (see S/1996/895). Mr. Kamanda wa Kamanda would do well to review his own sources, the best of which are, in our opinion, the "indigenous Bafulero" inhabitants, who confirm the centuries-old presence of the Banyamulenge in the area which they share with them.

In addition to the collective memory of the local inhabitants, it would also be instructive to refer to such varied written sources as those produced by the colonial administrators of the 1920s, the Belgian researchers J. Maquet and J. Hiernaux in 1954, and the historian A. Kagame in 1972.

President Mobutu, on the other hand, knows the history of his people better than his cabinet ministers do. And it was by no means an accident that he stated in December 1996, upon returning from his stay in Europe, that the problem of nationality could not possibly arise in Zaire. He was referring to the Banyamulenge. But no matter what the Kinshasa authorities may say, can a right as fundamental as the right to one's nationality be subjected to such continual questioning?

To be more specific, it should be emphasized that four categories of Kinyarwanda-speaking people were known in Zaire in the pre-colonial, colonial and post-colonial periods:

1. The population which became "Congolese" as a result of the drawing of the colonial frontiers at the International Conference of Berlin in 1885, including the Banyamulenge.

2. The population transplanted from Rwanda-Urundi to the Belgian Congo from 1925 to 1956 in order to satisfy the demand for manpower in agriculture and mining. These were immigrants who, upon arrival in their adoptive country, received a Congolese identity card.

3. The population made up of refugees who have fled Rwanda since 1959.

4. The recent Rwandan refugees of 1994, who have returned to their country of origin since 15 November 1996.

It is the first category that is of particular interest to us here. In redrawing the political map of Africa, the 1885 Berlin Conference also altered the frontiers of pre-colonial Rwanda. A consequence of this was the loss of the present-day regions of Rutshuru, Goma, Masisi, Kalehe and Île d'Ijwi and the present region of the Banyamulenge in South Kivu.

It is clear that the Rwandese living in those regions became "Congolese" citizens as a result of circumstances, while preserving their traditional cultural heritage, including their language. The fact was that a new geographical framework had been created, while the human realities remained unchanged, a situation that would be definitively confirmed in Brussels in 1911.

Certain circles in Kinshasa have sought to exploit the comments made by Rwanda's Head of State, Mr. Pasteur Bizimungu, in October 1996, when he condemned the acts of genocide perpetrated against a group of Kinyarwanda-speaking Zairian citizens which Zaire had inherited as a result of the Berlin Conference.

Let there be no confusion in this matter: Rwanda makes no claim to its pre-colonial territories which became Zairian after 1885. Nevertheless, it can hardly be criticized for regularly condemning the pursuit in eastern Zaire of the genocide committed in Rwanda in 1994 against the Kinyarwanda-speaking people referred to above. It was precisely in that spirit that reference was made at that time to the second Berlin Conference, which was intended at least to endorse the legal acceptance of the populations which some States, such as Zaire, had inherited from the first Berlin Conference.

Rwanda's highest-ranking authorities have already clearly expressed their solemn respect for the intangibility of the colonial frontiers. In their view, however, this principle presupposes at the same time that African States fully accept their responsibilities towards the populations which have changed countries since 1885.

As a neighbour of Zaire, Rwanda was one of the first witnesses of the tragedy which began in early 1996, as thousands of refugees fleeing the massacres found refuge in its territory.

It is, nevertheless, surprised that it was not until the Banyamulenge refused to submit passively to extermination in September 1996 that Zaire woke up. It is paradoxical that the then Vice-Governor of South Kivu, Mr. Luabandji Rwasi-Ngabo, should have reacted by issuing an ultimatum suggesting that they should leave their territory, as if they had another territory elsewhere.

III. THE ARMS TRAFFIC IN EASTERN ZAIRE PREDATES THE PRESENT WAR

In their attempt to internationalize a purely internal conflict, the Zairian authorities have on occasion referred to the use of heavy weapons by the Alliance forces, claiming that they could not have obtained this without outside assistance. It is inter alia on these grounds that senior Zairian officials have sought to accuse countries bordering on Zaire, including Rwanda.

However, this argument could be effective only in circles that are ill-informed about the Zairian context in general, and about the actual situation in eastern Zaire since 1994.

The truth is that weapons of all categories have been freely circulating in the above-mentioned region in recent times. And with good reason, in that the Rwandan ex-soldiers and militiamen had retained intact in their possession all the military equipment they had had in Rwanda. It was not without justification that the joint Rwandan-Zairian communiqué issued on the occasion of the visit by the Zairian Prime Minister, Léon Kengo wa Dondo, to Kigali in August 1996 emphasized the need to disarm the Rwandan ex-soldiers and militiamen who had taken refuge in Zaire.

Opening the forty-seventh session of the Executive Committee of the Programme of the United Nations High Commissioner for Refugees on 7 October 1996, Mrs. Sadako Ogata, the High Commissioner, reverted to this need to disarm the Rwandan ex-soldiers and militiamen, deploring the fact that it had to date been impossible to separate the refugees from the still armed Rwandan militiamen and ex-soldiers.

To these weapons which arrived from Rwanda in July 1994 must be added the many arms shipments which, for more than two years, have continually been transported to this part of Zaire, intended for these same ex-soldiers and militiamen. These arms came from certain external circles which are implicated by the United Nations report currently being finalized.

This presence in eastern Zaire of vast quantities of firearms in the hands of the Rwandan militiamen and ex-soldiers has resulted in the development in this region of an extensive contraband trade in such weapons of war. This trade was all the more easy in that the perpetrators of the Rwandan genocide in the region were not subject to any governmental control.

This is a situation of explosive insecurity to which the Rwandan Government has continually drawn attention in the interest both of Zaire and of the countries of the subregion.

The great paradox is that the Zairian Government had never reacted as long as the arms in question were being used to massacre its own, essentially Kinyarwanda-speaking, population. It woke up only in September 1996, when the population turned these weapons against their executioners. It is also important to note here that the Zairian Government categorically refused to collaborate with the Commission of Inquiry on the arms traffic in eastern Zaire. For the record, this was a Commission established by the United Nations Security Council.

Moreover, it can be no surprise to the authorities in Kinshasa that the Banyamulenge, for example, are trained in the use of firearms. They cannot but remember that the latter were armed and extensively used by the Mobutu Government to put down the Mulele rebellion in South Kivu in the 1960s.

That various Zairian forces should now have formed a coalition to combat the practices of the Kinshasa regime and halt the genocide that has been initiated in eastern Zaire has nothing to do with neighbouring countries such as Rwanda. Did not the Zairian Deputy Prime Minister and Minister for Foreign Affairs, Mr. Kamanda wa Kamanda, recently admit, in New York, that the leaders

of the Alliance forces, such as Laurent Kabila, Ngandu Kissase and others, are no less Zairian than he is?

IV. WHAT STATUS IS TO BE ASSIGNED TO THE CRIMINAL PERPETRATORS OF THE GENOCIDE IN ZAIRE?

A. An ambiguous situation since 1994

In July 1994, ideologists of genocide, many militiamen and ex-soldiers from the former Rwandan regime went into exile in Burundi, the United Republic of Tanzania and Zaire. They had just massacred in Rwanda more than a million people, for the most part Tutsi, along with Hutu who were opposed to the ideology of genocide.

These militiamen and ex-soldiers took with them when they fled hundreds of thousands of refugees whom they forced into exile through manipulation, and above all by force of arms. In the host countries, these criminal perpetrators of genocide remained in refugee camps where they literally took hostage the innocent populations that had been displaced with them. They sought to use them as political shields and threatened with death or killed anyone suspected of intending to return to Rwanda.

What is truly scandalous about this situation is that the armed militiamen and ex-soldiers had for all this time been benefiting from the international humanitarian assistance intended for the refugees. What is more, it is they who are running the camps, and ultimately using them as a tool of their manipulatory games.

In Zaire, the situation is thus extremely sensitive. Apart from the fact that almost all the Rwandan militiamen and ex-soldiers were in North and South Kivu (in eastern Zaire), they still had in their possession all the weapons they were armed with in Rwanda. Furthermore, some outside circles have continued to arm them, with the complicity of the Zairian Government. This concentration of weapons in the hands of the Rwandan militiamen and ex-soldiers has had the immediate consequence of extending the massacres and acts of genocide into eastern Zaire, as indicated above. Even so, these armed criminals have continued to be labelled as refugees.

And yet the 1951 international conventions and the 1969 OAU Convention are unequivocal on the subject. They deny the status of refugees to criminal perpetrators of genocide and to anyone bearing arms or involved in breaches of the peace.

For its part, the Office of the United Nations High Commissioner for Refugees had already drawn attention to this situation, while emphasizing that without the support of the host country, it was unable on its own to separate the militiamen and ex-soldiers from the ordinary refugees.

B. Militiamen and ex-soldiers fighting alongside the Zairian Army

For the record, the selective massacres conducted in North Kivu against one category of the Kinyarwanda-speaking population from February to August 1996 were subsequently extended to South Kivu. Until that time, they had been organized primarily by the Rwandan militiamen and ex-soldiers, with the complicity and assistance of certain civilian and military authorities in eastern Zaire.

In September 1996, the Banyamulenge of South Kivu, one of the Kinyarwanda-speaking groups in Zaire, refused to submit to extermination and took up arms against the aggressors. They had to contend with the Rwandan militiamen and ex-soldiers, as well as with the Zairian Army, which this time assumed control of the operations.

This turn of events was extremely embarrassing for the Government in Kinshasa. The previous massacres had often been presented as having been carried out by the criminal perpetrators of the Rwandan genocide, who were long out of control in eastern Zaire. The awkward fact this time was that the Zairian authorities appeared to be engaging in these massacres alongside the latter, against their own population. It was at this time that the Zairian authorities had to justify their official involvement by means of an imaginary external threat, ensuring media coverage of which was sufficient for their purpose. In addition, this constituted a pretext capable of explaining any possible call for outside military assistance against an internal resistance which appeared to be organized. Since then, Rwandan militiamen and ex-soldiers have become fully involved in this war between Zairians which they had in fact provoked. They have continued to fight alongside the Zairian army, whether in South Kivu, North Kivu or, now, in Haut-Zaire.

It is in these circumstances that hundreds of thousands of refugees hitherto held hostage by the same militiamen and ex-soldiers have been able to return en masse to their country of origin. Those in charge of the camps, who had remained armed since July 1994, were occupied elsewhere, or even rendered helpless by the consequences of the war.

Thus the mass return of these refugees which began on 15 November 1996 permitted a definitive solution to the question of the refugees in eastern Zaire. Of the hundreds of thousands of refugees, there remain only tens of thousands of people, comprising militiamen and ex-soldiers, together with their families, in Haut-Zaire. They are located primarily at Tingi-Tingi, a true large-scale military camp which is supplied with arms and munitions by the Zairian military authorities.

The situation has now become sufficiently clear, in that the mass return of the refugees to Rwanda and the position taken by the militiamen and ex-soldiers in this war in Zaire now make it possible to dispel any doubt on the subject. There had long been doubt as to the status of the refugee camps, at the time when refugees along with militiamen and former soldiers still bearing arms were housed together in them.

Thus the international community is called upon to adjust its position before it is too late. There is an urgent need to stop assigning to the Rwandan militiamen and ex-soldiers who committed genocide a refugee status which they do not possess.

CONCLUSION

The Rwandan Government welcomes the recent nomination of Mr. Mohammed Sahnoun as Special Representative of the United Nations and OAU in the Great Lakes region. It hopes at the same time that he will help give the international community a better understanding of the realities prevailing in that region.

Prominent among the sensitive issues that already merit the attention of the Special Representative of the United Nations and OAU is the crisis in eastern Zaire. It involves an internal war which broke out in September 1996, but whose causes date from the beginning of that year, in that the Alliance forces currently fighting the Mobutu regime were reacting to the violence, massacres and acts of genocide committed successively in North and South Kivu since February 1996.

They were reacting also to the cavalier attitude taken by the Zairian Government to issues as basic as the right to nationality, which have literally been left to the whim of politicians.

The politicians have even gone so far as to call in question the nationality of the Kinyarwanda-speaking Zairian populations, a nationality automatically conferred on them by the drawing of the colonial frontiers in 1885. The result has been deliberate action to drive them out of their ancestral territories in North Kivu (Rutshuru, Masisi, Goma) and South Kivu (the region of the Banyamulenge).

It was all these cases of violation of inalienable rights, accompanied by action to exterminate one or another population group, which were at the origin of this war. It is undoubtedly through analysis of such problems, in addition to other claims strictly internal to Zaire, that a lasting solution to the crisis must be sought. To view the Zairian crisis in any other terms would be tantamount to misdiagnosing the situation.

The countries of the region, including Rwanda, which have often been accused by the Zairian Government, have no territorial claims to assert. On the contrary, they would like this neighbouring country to regain its domestic stability in the interests of lasting peace in this part of the continent.

On the other hand, Rwanda is indignant that Zaire should today, on its own territory, be playing the game of the criminal perpetrators of the Rwandan genocide.

After having been accomplices of, and even assisted, the militiamen and ex-soldiers in committing acts of genocide in North and South Kivu, the Zairian

authorities have now gone so far as to enlist them alongside the regular Army and mercenaries.

This raises a question of public morality, both national and international, and poses a severe challenge to the responsibility of the international community. In the final analysis, should armed militiamen and ex-soldiers continue to be treated as refugees even now, when the genuine refugees who were for a long time held hostage have returned to Rwanda?

When all is said and done, should not the Zairian Government be called upon to shoulder its responsibilities to its own citizens in eastern Zaire, and be publicly challenged for having worked for the return of mercenaries to Africa, 40 years after independence?

(Signed) Anastase GASANA
Minister for Foreign Affairs and Cooperation

UNITED
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General Assembly
Security Council

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A/52/84
S/1997/179
3 March 1997

ORIGINAL: ENGLISH

GENERAL ASSEMBLY
Fifty-second session
Item 71 of the preliminary list*
GENERAL AND COMPLETE DISARMAMENT

SECURITY COUNCIL
Fifty-second year

Letter dated 3 March 1997 from the Chargé d'affaires a.i. of the Permanent Mission of Armenia to the United Nations addressed to the Secretary-General

I have the honour to forward to you herewith the text of a statement issued on 28 February 1997 by the Ministry of Foreign Affairs of the Republic of Armenia.

I should be grateful if you would circulate the statement as a document of the General Assembly, under item 71 of the preliminary list, and of the Security Council.

(Signed) Movses ABELIAN
Chargé d'affaires

* A/52/50.

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ANNEX

Statement issued on 28 February 1997 by the Ministry of Foreign Affairs of the Republic of Armenia

During the last week, Azerbaijan has been circulating statements with regard to so-called illegal transfer of arms to Armenia. In its statements, Azerbaijan relies exclusively on the unofficial information provided by Minister Aman Tuleyev of the Russian Federation. This information has not been confirmed by any of the interested parties. As is known, the State Duma of the Russian Federation has opened an investigation into the matter.

The Ministry of Foreign Affairs of the Republic of Armenia regrets that Azerbaijan, once more, has succumbed to the temptation of exploiting any opportunity in pursuit of its political goals. The Ministry is concerned by the Azerbaijani attitude and is inclined to assess it as Azerbaijan's intention to deviate from negotiations and embark on the path of military adventurism.

The Ministry would like to note that, since the establishment of the ceasefire in the Nagorny Karabakh conflict, Azerbaijan has been consistently violating the letter and the spirit of the ceasefire agreement, the resolutions of the United Nations Security Council and the decisions of the Organization for Security and Cooperation in Europe.

During 1993-1995, Azerbaijan purchased from Ukraine 150 battle tanks in three shipments, and 10 combat aircraft. Azerbaijan has notified the member States of the Treaty on Conventional Armed Forces in Europe about these purchases through its notes dated 3 November 1993 and 12 December 1993 and two notes dated 26 April 1994.

In addition to the above-mentioned arm transfers, according to our information from reliable sources, during the same period Azerbaijan purchased 12 MiG 21, 4 SU-15 and 2 SU-25 combat aircraft, and 100 T-55 battle tanks, about which the Treaty community was not notified. In the spring of 1994, a large quantity of spare parts for T-62 battle tanks were transported to Azerbaijan on a special flight. In late 1995, Azerbaijan acquired, through the KOFISA firm, semi-active laser-guided GANKAB-500L air bombs and surface-to-air anti-radar Kh-25ML and Kh-29L missiles. In 1996, 2,600 BM-21 missiles were also shipped to Azerbaijan.

According to our information, Azerbaijan has already entered into an agreement to receive an additional 8 SU-24 combat aircraft, and 18 aircraft engines. Azerbaijan will also receive missiles for the Uragan missile launchers. A large number of foreign experts and technicians are involved in the operations of the Azerbaijani No. 102 tank and No. 307 helicopter engine factories. They also plan to start joint production of engines for surface-to-surface guided missiles, turbo jet engines for aircraft and OT-5600 and TIP-9600 radio stations.

Azerbaijan is also in serious non-compliance and violation of the provisions of the Treaty on Conventional Armed Forces in Europe. According to

its notifications and annual exchange of military information as at 1 January 1997, Azerbaijan significantly exceeds its notified maximum levels for holdings in three categories of the equipment limited by the Treaty (battle tanks, armoured combat vehicles and artillery units). In the battle tank category, it holds 285 units against the 220 permitted; in the armoured combat vehicle category 785 against 220; and in artillery 336 units against 285.

Along with this, the destabilizing accumulation of forces by Azerbaijan in Nakhichevan is also of concern. In the armoured combat vehicle category alone, 428 out of its 785 units, plus the 107 vehicles at the disposal of Interior Ministry forces, are stationed on the territory of the Nakhichevan republic. This is despite the limit of 220 as the maximum level for armoured combat vehicle holdings for the entire Azerbaijani territory. There is additional destabilizing accumulation of forces along the contact line between Nagorny Karabakh and Azerbaijan, particularly at two centres, Gianja and Kurdamir.

The exploitation of the unsubstantiated facts of Minister Tuleyev's statement by a country with these kinds of gross violation is a matter for serious concern.

The Ministry of Foreign Affairs of the Republic of Armenia qualifies this most recent Azerbaijani move as a preparatory campaign to justify its plans for a military solution to the Nagorny Karabakh conflict.

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A/52/85
S/1997/180
3 March 1997

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GENERAL ASSEMBLY
Fifty-second session
Item 114 (b) of the preliminary list*
HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS QUESTIONS, INCLUDING ALTERNATIVE APPROACHES FOR IMPROVING THE EFFECTIVE ENJOYMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

SECURITY COUNCIL
Fifty-second year

Letter dated 3 March 1997 from the Chargé d'affaires a.i. of the Permanent Mission of Armenia to the United Nations addressed to the Secretary-General

I have the honour to forward to you herewith the text of a statement issued on 3 March 1997 by the Ministry of Foreign Affairs of the Republic of Armenia.

I should be grateful if you would circulate the statement as a document of the General Assembly, under item 114 (b) of the preliminary list, and of the Security Council.

(Signed) Movses ABELIAN
Chargé d'affaires

* A/52/50.

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ANNEX

Statement issued on 3 March 1997 by the Ministry of Foreign Affairs of the Republic of Armenia

The Azerbaijani statement of 22 February 1997, with regard to what they call the Khojalu event, is the most cynical and vicious statement ever made by Azerbaijan.

Azerbaijan refers shamelessly to a 1992 military event, where, according to then-Azerbaijani President Mutalibov, the responsibility for the slaughter of the civilian population of the mostly Azeri city of Khojalu near the capital Stepanakert of Nagorny Karabakh fully falls on the Azeri opposition group, the Azerbaijani National Front.

In the days following the event, President Mutalibov, in an interview with Czech journalist Dana Mazalova published in the 2 April 1992 issue of the Russian newspaper Nizavisimaya Gazeta, said that the militia of the Azerbaijani National Front actively obstructed and actually prevented the exodus of the local population through the mountain passages specifically left open by Karabakh Armenians to facilitate the flight of the civilian population.

(On this matter, the September 1992 report of the Helsinki Watch international non-governmental organization quotes an Azerbaijani woman who says that Armenians had notified the Azerbaijani civilian population to leave the town with white flags raised.) In fact the Azerbaijani militia shot those who attempted to flee.

The hope and intention of the Azerbaijani opposition was to utilize civilian losses of such a magnitude to instigate a popular uprising against the Baku regime and seize the reins of power. Azerbaijan does not stop at simply distorting the truth. Not only does it falsely attribute its own opposition's merciless slaughter of Khojalu's civilian population to Armenians, it brazenly characterizes the killings as "distinctively inhumane and cruel" and "massacres". In so doing Azerbaijan fully comprehends that for the Armenian people these terms unfailingly evoke memories of massacre and genocide in Armenians' distant - and recent - past.

It is not coincidental that Azerbaijan has dared to make this statement on the anniversary of the most bloody event of Armenia's recent history. On 28 February 1988, when the people of Nagorny Karabakh were arguing by peaceful and constitutional means for their right to self-determination, Azerbaijani authorities organized and armed a mob, which began pogroms against Armenians in the Azerbaijani city of Sumgait. The Sumgait massacres were followed by killings and pillaging in Gianja in November 1988 and Baku in January 1990.

In the spring of 1991, the very leaders of the current Azerbaijani regime, assisted by the Soviet Army, organized the depopulation of the Armenian regions of Northern Artzakh, and the deportation of the Armenian population of Nagorny Karabakh and the surrounding 24 regions. Helsinki Watch, in the above-mentioned report, testifies that "these events were intended to exacerbate the fear and

horror of ethnic Armenians in other parts of Azerbaijan" and lead to the deportation and ethnic cleansing of more than 600,000 Armenians.

These atrocities were followed by a cycle of large-scale Azerbaijani military offensives and operations designed to produce a military solution to the conflict by annihilating the population of Nagorny Karabakh.

Although such acts have all taken place in the last decades of the twentieth century, the people of Nagorny Karabakh experienced a similar fate during the first two decades of this century as well. The massacres and pogroms of 1905 in Baku, and 1918 and 1920 in Shushi, where the entire city of Shushi was burned and its whole population was annihilated, are still vivid memories.

Therefore, this statement can only be seen as a crude, gross violation of the norms and principles of international law. While fostering an aggressive and exclusive nationalism, Azerbaijan blatantly promotes and incites ethnic hatred towards the population of Nagorny Karabakh, with whom it continuously claims it can peacefully and harmoniously live together. Further, Azerbaijan proclaims it can guarantee Karabakh's security and peaceful existence, even while it advances distrust and enmity by falsely accusing Armenians and callously misrepresenting its own role and responsibility in recent events.

The Ministry of Foreign Affairs of the Republic of Armenia once again reiterates the warning sounded by the President of Armenia, Levon Ter-Petrossian, during the Lisbon summit of the Organization for Security and Cooperation in Europe, that, in the event of imposed Azerbaijani rule on Nagorny Karabakh, the people of Nagorny Karabakh will face the threat of genocide.

UNITED NATIONS

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S/1997/181
3 March 1997
ENGLISH
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GENERAL ASSEMBLY
Fifty-second session
Item 37 of the preliminary list*
THE SITUATION IN THE MIDDLE EAST

SECURITY COUNCIL
Fifty-second year

Letter dated 28 February 1997 from the Permanent Representative of the Netherlands to the United Nations addressed to the Secretary-General

I have the honour to bring to your attention the statement issued by the Presidency on behalf of the European Union on the decision of the Government of Israel to approve construction plans for Har Homa/Jabal Abu Ghneim.

I should be grateful if you would have this letter and its annex distributed as a document of the General Assembly, under item 37 of the preliminary list, and of the Security Council.

(Signed) N. H. BIEGMAN
Permanent Representative of the
Netherlands to the United Nations

* A/52/50.

ANNEX

[Original: English and French]

Statement issued on 27 February 1997 by the Presidency on behalf of the European Union on the decision of the Government of Israel to approve construction plans for Har Homa/Jabal Abu Ghneim

The European Union deeply deplores the decision of the Government of Israel to approve construction plans for Har Homa/Jabal Abu Ghneim, located on the West Bank in the Jerusalem area. The European Union has repeatedly stated that settlements in the occupied territories contravene international law and are a major obstacle to peace.

The European Union once again reaffirms its policy on the status of Jerusalem. East Jerusalem is subject to the principles set out in Security Council resolution 242 (1967), notably the inadmissibility of the acquisition of territory by force, and is therefore not under Israeli sovereignty. The European Union considers that the Fourth Geneva Convention is fully applicable to East Jerusalem, as it is to other territories under occupation.

The European Union calls on Israel to respect its obligations under international law and to refrain from measures that have an eroding effect on the confidence necessary for the further implementation of the agreements and prejudge the outcome of the permanent status negotiations. The decision is especially regrettable since the signing of the Protocol on Hebron was a positive development that created a new momentum in the peace process and raised hope for further constructive steps in the process.

UNITED NATIONS **A S**

General Assembly
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A/51/817
S/1997/182
3 March 1997

ORIGINAL: ENGLISH

GENERAL ASSEMBLY
Fifty-first session
Agenda items 33, 35 and 85
THE SITUATION IN THE MIDDLE EAST
QUESTION OF PALESTINE
REPORT OF THE SPECIAL COMMITTEE TO INVESTIGATE ISRAELI PRACTICES AFFECTING THE HUMAN RIGHTS OF THE PALESTINIAN PEOPLE AND OTHER ARABS OF THE OCCUPIED TERRITORIES

SECURITY COUNCIL
Fifty-second year

Identical letters dated 3 March 1997 from the Permanent Representative of Indonesia to the United Nations addressed to the Secretary-General and to the President of the Security Council

I have the honour to forward to you herewith the text of a statement adopted by the Islamic Group at its meeting held today, Monday, 3 March 1997, at United Nations Headquarters (see annex). The Islamic Group met to consider the latest developments in East Jerusalem following the decision by the Government of Israel on 26 February 1997 to build a new settlement in Jabal abu Ghneim in East Jerusalem in violation of the relevant resolutions of the Security Council and the General Assembly, as well as of the Declaration of Principles and the subsequent agreements.

I would appreciate it if you would have the present letter and its annex circulated as a document of the fifty-first session of the General Assembly, under agenda items 33, 35 and 85, and of the Security Council.

(Signed) Nugroho WISNUMURTI
Ambassador
Permanent Representative
Chairman of the Islamic Group

ANNEX

Statement issued on 3 March 1997 by the Islamic Group of the Organization of the Islamic Conference

1. The Islamic Group of the Organization of the Islamic Conference met on 3 March 1997 at the ambassadorial level at United Nations Headquarters at the request of the delegation of Palestine.

2. The Islamic Group reiterated the earlier resolutions of the Organization of the Islamic Conference on the question of Palestine, the City of Al-Quds Al-Sharif and the Arab-Israeli conflict.

3. The Islamic Group expressed deep concern over recent illegal measures taken by Israel, inter alia, the building of settlements in the occupied Palestinian territories, including Jerusalem, and the occupied Syrian Arab Golan. In this regard, the Group expressed particular concern over the Israeli decision on 26 February 1997 to build a new settlement in Jabal abu Ghneim in East Jerusalem, which constitutes the latest attempt by Israel at pre-empting the outcome of the negotiations on final status by changing the legal status and demographic composition of Jerusalem - a city which is of central importance to the Arab world and the world of Islam, the three major religions, as well as the international community in general. The Israeli decision violates the relevant resolutions of the Security Council and the General Assembly, as well as the Declaration of Principles and the subsequent agreements. It therefore threatens to undermine the progress which has been achieved in the Middle East peace process.

4. The Islamic Group called on the international community, including the Security Council, to take urgent steps to ensure that the Government of Israel reverses its decision and renounces any settlement activity in the Arab occupied territories, in particular East Jerusalem.

5. The Islamic Group decided to remain seized of the matter.

UNITED
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Security Council

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S/1997/183
3 March 1997

ORIGINAL: ENGLISH

LETTER DATED 3 MARCH 1997 FROM THE PERMANENT REPRESENTATIVE OF BOSNIA AND HERZEGOVINA TO THE UNITED NATIONS ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

We forward to the attention of the Security Council and for its consideration of further measures, the report and recommendations of the United Nations International Police Task Force (IPTF) and the Office of the High Representative with regard to a recent (10 February 1997) incident in which Bosnians were attacked by uniformed and non-uniformed police elements, with fatal consequences while visiting a graveyard in West Mostar. The report was produced in response to a request emanating from President Tudjman of the Republic of Croatia and President Izetbegovic of Bosnia and Herzegovina as well as Bosnian Croat and Bosnian Muslim leaders. The latter requests have already been forwarded to the Security Council in our letters of 11 and 17 February 1997, respectively (S/1997/121 and S/1997/140).

We have been informed by the Office of the High Representative that the recommendations of the report still remain to be implemented. We would envision that the Secretariat may be in a position to provide a further update regarding implementation and any other events considered relevant.

May I ask for your kind assistance in circulating the text of the present letter as well as its annex as a document of the Security Council.

(Signed) Muhamed SACIRBEY
Ambassador and Permanent Representative
of Bosnia and Herzegovina
to the United Nations

97-05594 (E) 040397

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Annex

Letter dated 24 February 1997 from the Principal Deputy High Representative addressed to the Chair of the Presidency and a member of the Presidency of Bosnia and Herzegovina

Please find enclosed an advance copy of the report of the United Nations International Police Task Force (IPTF) in pursuance of the 12 February decisions on Mostar (S/1997/140, annex). The present report has been submitted to the Principals of the major implementation agencies in Bosnia and Herzegovina and the Contact Group today and will form the basis for our meeting with the Federation partners scheduled for Tuesday, 25 February, when decisions on the necessary conclusions shall be taken. Please keep this report absolutely confidential until after tomorrow night's meeting.

With the full support of the Principals and the Contact Group, I request from you the following:

I. As you will see from the report, the IPTF Special Investigation Group has succeeded in establishing the facts in full related to the intended Bajram visit to the Kneza Mihajla Humskog/former Liska Street graveyard on 10 February. The report contains irrefutable proof that plainclothes and uniformed West Mostar police officers opened fire at the backs of citizens who had at that moment already given up on visiting the graveyard and were retreating. One person was killed and at least 20 persons were wounded.

The investigation did not reveal any provocations justifying the use of force by the police. Instead, the investigation has shown that the West Mostar Police had received advance notification of the planned visit to the cemetery, had acknowledged the visit and had assigned police officers to the route in advance. There was no connection between the graveyard visit and the festivities on the Rondo. Nevertheless, rather than performing their duty of protecting the public, the police not only participated in but instigated the violence.

It is vital now to demonstrate to the citizens of this country that crimes do not go unpunished. In particular, the following must be undertaken immediately:

1. Ivan Hrkac, Deputy Chief of the West Mostar Police, and Zeljko Planinic, West Mostar police officer, have been identified as having fired into the retreating marchers on Kneza Mihajla Humskog/former Liska Street on 10 February. One plainclothes officer, Bozo Peric, was identified by witnesses and was seen firing into the crowd. They must be dismissed from office and arrested by 26 February, and then prosecuted to the full extent of the law.

2. Police officers Zlatko Pavlovic and Josip Cvitanovic were photographed with their weapons drawn during the shooting. They must be suspended from their duties by 26 February and their actions must be criminally investigated and prosecuted to the full extent of the law.

3. Contrary to his obligation to cooperate fully, the Chief of the West Mostar Police, Marko Radic, obstructed the IPTF investigation. He must be dismissed from office by 26 February and replaced by a professional police officer from outside the Mostar region.

Criminal investigations and judicial proceedings relating to all police officers involved in the 10 February incident must proceed promptly and be pursued to the full extent of the law with complete international monitoring.

In addition, as I announced in point 10 of the Mostar decisions, I will recommend to the European Union (EU) Governments and to the Steering Board members to bar those who have been identified in the report as perpetrators of the violence, including Mr. Hrkac, Mr. Planinic and Mr. Peric, from travelling to Europe and overseas.

II. The shooting of 10 February is inexcusable. But it cannot be seen in a political vacuum. The weeks preceding 10 February saw a sequence of incidents, including grenade attacks on both sides of the city and on the Franciscan monastery located on the Boulevard, without the political leadership undertaking serious joint efforts to calm the growing tensions. It is distressing that neither the Mayor of Mostar and his Deputy nor the Canton Minister of the Interior and his Deputy, notwithstanding their political differences, addressed the public jointly or undertook any efforts to keep extremists in check. Their political performance and their efforts to put an end to inflammatory statements issued by public figures and in the press will have to be monitored closely. I will not hesitate to request your intervention and action by the EU Governments regarding travel restrictions against any politician in the Herzegovina Neretva Canton who continues to pour oil on the flames.

Additional steps need to be taken to further normalize the situation in Mostar and other parts of the Federation. The report states that as information of the violence of 10 February spread, random and sporadic attacks on citizens in locations around the city and on routes out of and into Mostar (M-17) were reported. These attacks involved Bosniac victims, but many of them were also directed against Bosnian Croats. The report states that the failure of the police, in both East and West Mostar, to provide protection to potential and actual victims of the series of cross-ethnic attacks in the incidents both prior to and after the 10 February event illustrates the serious absence of professional police leadership throughout the area. Therefore, I request both of you to address this issue and to replace the police leadership on both sides of the Neretva with professional police officers from outside Mostar.

Violence spread beyond Mostar. On 20 February, unknown criminals attacked the Church and Monastery of St. Anthony in Sarajevo with hand grenades. This attack, in particular, as it was directed against the Central Bosnian Franciscans who have long stood for tolerance and multi-ethnicity, is an assault on these values in Sarajevo, in the Federation and in Bosnia and Herzegovina as a whole.

The Principals have requested IPTF and the Human Rights Coordination Centre of the Office of the High Representative to submit an additional report detailing the incidents preceding and following the violence of 10 February for

consideration by the Federation partners. The Federation partners must commit themselves to draw all necessary conclusions, including personal consequences for all officials and police officers who have failed to perform their duties.

III. Mostar must be addressed now. But beyond recent events in Mostar, the Federation as a whole is facing a severe crisis. More radical efforts must be undertaken to achieve a turning point in the relations between the peoples of the Federation and their leaders. In particular, you should now commit yourselves personally to speedy implementation of the Sarajevo Protocol, the adoption of a first Law on Municipal Reforms and further progress in building the Mostar institutions. The Federation must take a new approach to the media as well. The return of refugees and displaced persons must also be addressed. It is unacceptable that three years after the conclusion of the Washington and Vienna Agreements, return to minority areas within the Federation has not yet really started.

I have enclosed a detailed list of steps to be undertaken following the IPTF report, and of urgent Federation issues on which I will request your agreement tomorrow.

(Signed) Michael STEINER
Principal Deputy High Representative

Enclosure

Addendum to the letter of Ambassador Steiner to President Izetbegovic and President Zubak of 24 February

I. IMPLEMENTATION OF THE DECISIONS ON MOSTAR OF 12 FEBRUARY

1. The Reinstatement Team (composed of Mostar police, the United Nations International Police Task Force (IFOR) and the Stabilization Force (SFOR)) formed under point 4 of the decisions on Mostar (S/1997/140, annex) has now successfully assisted in allowing all persons illegally evicted in the wake of the events on 10 February to return to their homes. The team will continue its work. In particular, it will reinstate any persons who the Mostar Deputy Federation Ombudsman has determined were illegally evicted, should the authorities fail to act promptly to implement the Ombudsman's findings.

2. While the number of illegal evictions has substantially decreased, the threat of illegal eviction continues to cause many Mostar citizens to fear for their safety in their own homes. The report submitted by the Cantonal Minister of the Interior and his Deputy relating to reinstatements will be supplemented by 1 March with an additional report concerning the specific steps taken by the authorities to investigate all cases of illegal evictions, as well as attempted evictions and threats, and to prosecute those responsible, as required by point 4 of the decisions.

3. As of 24 February, point 6 of the decisions on Mostar regarding the commitment to the United Police Force of Mostar and the full participation in its work has not been implemented. President Izetbegovic and President Zubak will ensure that the police receive immediate instructions to resume participation, including in the joint headquarters.

4. Freedom of movement, under point 8 of the decisions, has not been fully established. Additional measures must be taken to restore confidence so that the citizens of Mostar feel able to move freely, including the removal of the sleeping policemen on the Boulevard.

5. Implementation of point 10 regarding maximum restraint in public statements remains vital. In particular in the light of the findings of the IPTF report, the statement by the Ministry of the Interior of the Herzegovina Neretva Canton on the opening of criminal investigations against the Deputy Mayor of Mostar and others in connection with the events of 10 February is unacceptable. The Minister of the Interior, Mr. Valentin Coric, is requested to immediately retract this statement publicly.

II. CONCLUSIONS TO BE DRAWN FROM THE IPTF REPORT

1. IPTF will deliver its report to the Government of the Herzegovina Neretva Canton, to the judicial authorities of the canton and the West Mostar Police for further action.

2. Mr. Ivan Hrkac, Deputy Chief of the West Mostar Police, and Mr. Zeljko Planinic, West Mostar police officer, have been identified as firing at the retreating marchers on Kneza Mihajla Humskog/former Liska Street on 10 February 1997. One plainclothes officer, Bozo Peric, was identified by witnesses and was seen firing into the crowd. The authorities shall immediately dismiss the three men from office and issue arrest warrants for them. The authorities will take all necessary steps to ensure their arrest by 26 February and to prosecute these men to the full extent of the law.

3. Police officers Mr. Zlatko Pavlovic and Mr. Josip Cvitanovic were photographed with their weapons drawn during the shooting. The authorities shall indefinitely suspend them from their duties by 26 February. A criminal investigation shall be initiated against both men, as well as against the as-yet unidentified police officer who was also photographed with his weapon drawn.

4. The criminal investigation of Mr. Hrkac, Mr. Planinic, Mr. Peric, Mr. Pavlovic and Mr. Cvitanovic will be pursued vigorously and will be completed as soon as possible. Upon completion of the criminal investigation, these cases will be brought to trial before an independent and impartial court and prosecuted to the full extent of the law.

5. All police officers identified as being present at Kneza Mihajla Humskog/former Liska Street on 10 February will be investigated to determine their involvement in the violence. Any police officer who assaulted, without any legal basis, any of the marchers will be immediately suspended from duty and will be criminally prosecuted.

6. Any person convicted in relation to the events of 10 February will be dismissed from office and barred from holding other public office or employment.

7. In accordance with annex 11 to the Peace Agreement, IPTF will have complete access to any site, person, activity, proceeding, record or other item or event throughout the criminal investigation and legal proceedings. Trials will be open to the public.

8. The Chief of the West Mostar Police, Mr. Marko Radic, did not fulfil his obligations under the decisions on Mostar to cooperate fully and in good faith with the IPTF Special Investigation Group. He will be dismissed from office by 26 February and replaced by a professional police officer from outside the Mostar region.

9. The Principal Deputy High Representative will immediately recommend to the EU Governments and the Steering Board members to bar Mr. Hrkac, Mr. Planinic and Mr. Peric from travelling to Europe and overseas. Should others be found guilty in the upcoming judicial procedures, similar recommendations will be made regarding these persons.

10. The report states that the failure of the police, both in East and West Mostar, to provide protection to potential and actual victims of the series of cross-ethnic attacks prior to and after the 10 February event illustrates the serious absence of professional police leadership throughout the area. Therefore, President Izetbegovic and President Zubak are requested to replace

the police leadership on both sides of the Neretva with professional police officers.

III. REQUEST FOR AN ADDITIONAL REPORT BY IPTF AND HRCC

IPTF, in cooperation with the Human Rights Coordination Centre (HRCC) of the Office of the High Representative, will submit an additional report detailing the incidents preceding and following the events of 10 February, including detention and assaults of motorists on the M-17 road. The report will be submitted to the Principals of the major implementation agencies in Bosnia and Herzegovina and to the Contact Group within 10 days. The Federation partners agree to accept and endorse the report in full and to draw the necessary conclusions from it.

IV. FEDERATION IMPLEMENTATION

1. The Sarajevo Protocol must be implemented without delay. The Sarajevo Working Group shall complete its work within two weeks. The necessary amendments to the Federation and Canton Constitutions shall be adopted by the Assemblies by 14 March. On 15 March, the City Council shall constitute itself, adopt the City Statute and elect the new Mayor of the City of Sarajevo.

2. In parallel, work on the amendments to the Federation and Herzegovina Neretva Canton constitutions regarding Mostar shall be completed and the amendments shall be adopted by the Assemblies by 14 March.

3. The Advisory Commission on municipal reforms shall conclude its work on split municipalities and the formation of a first group of new municipalities as agreed in the Commission by 25 February. The Federation House of Representatives shall adopt the Draft Law on 28 February.

4. President Izetbegovic and President Zubak will be personally available to ensure that any obstacle to the implementation of points 1 to 3 above will be overcome and the deadlines met.

5. The next Federation Forum will devote its attention to the security situation in the Federation, in particular in Central Bosnian municipalities. For this purpose, the Federation Ombudsmen together with the Human Rights Coordination Centre of the Office of the High Representative will prepare a report to be submitted to the Forum.

6. President Izetbegovic and President Zubak agree to a meeting with the Principal Deputy High Representative and the Special Envoy of the United Nations High Commissioner for Refugees by 7 March concerning return in the Federation in order to decide on how the Federation authorities will overcome present obstacles to return.

UNITED NATIONS **S**

Security Council

Distr.
GENERAL

S/1997/184
3 March 1997
ENGLISH
ORIGINAL: ARABIC

LETTER DATED 2 MARCH 1997 FROM THE PERMANENT REPRESENTATIVE OF IRAQ TO THE UNITED NATIONS ADDRESSED TO THE SECRETARY-GENERAL

On instructions from my Government, I have the honour to inform you that on 14 February 1997 a Saudi Arabian helicopter violated Iraqi airspace in Muthanna Governorate and that at 1300 hours on Saturday, 15 February 1997, there was another violation of the same kind involving penetration to a depth of 4 kilometres inside Iraq's borders.

I request your intervention with the Kingdom of Saudi Arabia with a view to ensuring that there will be no repetition of acts of this kind, which are unjustifiable and contravene the Charter of the United Nations and international law. They also constitute a flagrant violation of the sovereignty of a State Member of the United Nations.

I also reaffirm the legitimate right of the Republic of Iraq to seek compensation for any damage resulting from this violation, in accordance with the principle of international accountability.

I should be grateful if you would have this letter circulated as a document of the Security Council.

(Signed) Nizar HAMDOON
Ambassador
Permanent Representative

97-05576 (E) 040397 040397 050397

UNITED NATIONS **S**

Security Council

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GENERAL

S/1997/185
3 March 1997
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ORIGINAL: ARABIC

LETTER DATED 3 MARCH 1997 FROM THE PERMANENT REPRESENTATIVE OF IRAQ TO THE UNITED NATIONS ADDRESSED TO THE SECRETARY-GENERAL

On instructions from my Government, I have the honour to inform you of an incident that occurred on 19 February 1997. At 1000 hours on that day a Kuwaiti boat with two persons in civilian clothing on board was seen inside Iraqi territorial waters in the Khawr Abd Allah near buoy 15. It tried to stop a civilian launch operating in the area but returned towards the Kuwaiti shore when pursued by an Iraqi patrol boat. At 1220 hours on the same day, however, it once again entered Iraqi territorial waters in the same area near buoy 17 and was detained by Iraqi patrol boats. On board were two Kuwaitis:
Hadi Salih al-Ajami, a resident of Farwaniyah born in 1964; and
Nassar Hadi Mansur al-Dawsari, a resident of Sabahiyah born in 1972.

The two stated that they were engaged in smuggling hashish (the narcotic) into Kuwait. They had come out to sea from the Fuhayhil area on 17 February 1997, had met with an Iranian boat in international waters and had bought 12 pieces of hashish each weighing about 1 kilogram. They had thrown 11 of the pieces into the sea on being arrested by the Iraqi patrol boat, and there remained in the boat one piece of hashish weighing 1 kilogram. They were also found to be in possession of two cellular telephones and some United States dollars.

I request your intervention with Kuwait with a view to halting the acts it is committing inside Iraqi territorial waters for purposes of economic sabotage and in order to encourage the spread of serious social problems in the region. Such acts are in open defiance of the international community's policy of endeavouring to eliminate the international drug trade, and they are also in flagrant violation of the Charter of the United Nations and international law as infringing on the sovereignty of a State Member of the United Nations. In accordance with the principle of State responsibility, I also affirm the legally established right of the Republic of Iraq to seek compensation for all the damage caused by this violation.

I should be grateful if you would have this letter circulated as a document of the Security Council.

(Signed) Nizar HAMDOON
Ambassador
Permanent Representative

97-05582 (E) 040397 040397 050397

UNITED
NATIONS

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Security Council

Distr.
GENERAL

S/1997/186
3 March 1997

ORIGINAL: ENGLISH

LETTER DATED 3 MARCH 1997 FROM THE PERMANENT REPRESENTATIVE OF AZERBAIJAN TO THE UNITED NATIONS ADDRESSED TO THE SECRETARY-GENERAL

In accordance with instructions I have received, I would request you to circulate the text of the enclosed statement issued by the Ministry of Foreign Affairs of the Azerbaijani Republic on 3 March 1997 as a document of the Security Council (see annex).

(Signed) Eldar G. KOULIEV
Permanent Representative

97-05588 (E) 040397

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Annex

Statement dated 3 March 1997 by the Ministry of Foreign Affairs of Azerbaijan

[Original: Russian]

On 21 February 1997, the Ministry of Foreign Affairs of the Azerbaijani Republic issued a statement (S/1997/147) in connection with the illegal deliveries of Russian weapons to the Republic of Armenia which had been made public by the Minister for Commonwealth Affairs of the Government of the Russian Federation, Aman Tuleev. According to the information provided by Mr. Tuleev, in the past two years, Armenia has illegally obtained 84 T-72 tanks and 50 infantry fighting vehicles and spare parts.

The Azerbaijani side is particularly concerned at the fact that these illegal deliveries, which are in violation of the norms of international law and the principles for the peaceful settlement of the Armenian-Azerbaijani conflict, were made to Armenia - a country which carried out aggression against the Azerbaijani Republic, occupied 20 per cent of its territory and drove more than a million Azerbaijanis from their homes. The illegal deliveries to the Republic of Armenia are also in flagrant violation of the provisions of the Treaty on Conventional Armed Forces in Europe and complicate the search for ways to solve, within the framework of the Treaty, the problems that exist.

Azerbaijan has urgently called upon all the States parties to the Treaty, first of all, the Russian Federation, to take all appropriate measures in order to identify and remove the illegal weapons.

The Azerbaijani Republic has called upon the Republic of Armenia to bring about a peaceful settlement of the conflict and reject the policy of building up its military potential.

Unfortunately, to date there has been no official response on the part of the Government of the Russian Federation.

The statement issued by the Ministry of Foreign Affairs of the Republic of Armenia on 28 February 1997 (S/1997/179), which attempts to accuse Azerbaijan, without providing any proof, of committing the very acts which indeed constitute the essence of Armenia's policy, is cause for astonishment. The question arises, as to who is preparing for war: the one who is illegally and secretly acquiring weapons and deploying them in the territory of a neighbouring State occupied as a result of armed aggression, or the one who is drawing the attention of the world community to those illegal actions?

The incidents that were made public by Aman Tuleev are by far not the only ones and, as is demonstrated by the reaction of officials in Yerevan, not the last indication of Armenia's ongoing military preparations aimed at expanding its military potential and consolidating the results of its armed aggression.

According to reliable information obtained by the Azerbaijani Republic, Armenia possesses missile systems with a 300-kilometre range and a nuclear-strike capability. In order to acquire practical experience in the technical maintenance and use of these missiles, 20 servicemen from the armed forces of the Republic of Armenia, whose names are also known to the Azerbaijani side, were trained at one of the training bases of the Ministry of Defence of the Russian Federation in the vicinity of Moscow in Kapustin Yar. Although further such facts could be cited, what has already been stated demonstrates with sufficient eloquence, that Armenia is continuing to develop its military potential in order to prepare for a further cycle of aggression against the Azerbaijani Republic.

One can only be astounded by the insincerity with which the Republic of Armenia declares its non-involvement in such activities.

The Ministry of Foreign Affairs of the Azerbaijani Republic has been authorized to state that the Azerbaijani Republic continues to be committed to a peaceful settlement of the Armenian-Azerbaijani conflict and is prepared for the speediest resumption of negotiations by the Minsk Group of the Organization for Security and Cooperation in Europe (OSCE) on the basis of the principles for a settlement adopted at the OSCE Lisbon Summit.

The Azerbaijani Republic expects active steps on the part of the Government of the Russian Federation in order to halt the practice of illegal weapons deliveries, eliminate its consequences and also prevent the recurrence of such acts in the future.

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General Assembly
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S/1997/187
4 March 1997
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GENERAL ASSEMBLY
Fifty-second session
Item 155 of the preliminary list*
MEASURES TO ELIMINATE INTERNATIONAL
TERRORISM

SECURITY COUNCIL
Fifty-second year

Letter dated 3 March 1997 from the Permanent Representative of Lebanon to the United Nations addressed to the Secretary-General

With reference to the letter dated 3 February 1997 from the Chargé d'affaires a.i. of the Permanent Mission of Israel to the United Nations addressed to the Secretary-General (A/52/70-S/1997/108), I should like to reiterate certain observations that I deem to be indispensable in the light of Israel's insistence on continuing to ignore public opinion and on seeking to confuse and mislead it.

The tense situation in southern Lebanon and the escalation of violence there are the result of Israel's continued occupation of parts of Lebanese territory. This occupation has brought the Lebanese many human tragedies and much destruction and hardship, and it violates the norms of international law and the resolutions of the Security Council, especially its resolution 425 (1978) calling upon Israel to end its occupation, to cease its military actions against Lebanese territorial integrity and to withdraw forthwith its forces from all Lebanese territory.

Lebanon has time and again expressed its readiness to ensure security and the rule of law in southern Lebanon immediately on the withdrawal by Israel of its occupying forces in implementation of resolution 425 (1978), and this has been conveyed by its senior representatives in the United Nations General Assembly and the Security Council and in many official statements issued by the Lebanese Government.

* A/52/50.

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Lebanon has always cooperated with the United Nations and with the United Nations Interim Force in Lebanon (UNIFIL), which operates in the south of the country, and the reports of the Secretary-General and the resolutions of the Security Council have commended the constancy of such cooperation. In his statement on behalf of the members of the Security Council following the adoption of resolution 1095 (1997) on 28 January 1997 (S/PRST/1997/1), the President of the Council commended the Lebanese Government for its successful effort to extend its authority in the south of the country in full coordination with UNIFIL.

As against this, Israel has not hesitated to proclaim its lack of trust in the Organization whenever the opportunity presents itself. It has not been reluctant to confront UNIFIL, and it has frequently shelled its positions and inflicted casualties on it.

Perhaps the best attestation to this fact is the deliberate shelling of the headquarters of the Fijian contingent of UNIFIL on 18 April 1996, which killed 120 civilians, most of them women, children and older persons who had taken refuge in the compound in the mistaken belief that they would there be safe from Israeli shelling. (See the report of the Secretary-General contained in document S/1996/337 of 7 May 1996.) The General Assembly, by its resolution 50/22 C of 25 April 1996, subsequently condemned the Israeli shelling of the UNIFIL compound.

We repeat that the actions that the representative of Israel refers to as acts of terrorism are acts of resistance to occupation and are directed against military elements of the occupation forces. They are actions that have the purpose of liberating national territory from foreign occupation, and they arose as a reaction to the occupation and in self-defence, it being an intrinsic right of peoples to defend themselves pursuant to the relevant international covenants and in accordance with international law, the Charter of the United Nations and the various declarations adopted by the General Assembly in this regard, most recently the Declaration on the Occasion of the Fiftieth Anniversary of the United Nations adopted by the Assembly in its resolution 50/6 of 24 October 1995.

The Lebanese Government has affirmed its commitment to the goals of the Madrid Conference and to the achievement of a just, lasting and comprehensive peace in the region on the basis of the relevant United Nations resolutions and the principle of land for peace. Lebanon considers that the implementation of Security Council resolution 425 (1978), which calls upon Israel to withdraw from the Lebanese territory it occupies to the internationally recognized boundaries, remains a basic condition for the achievement of peace.

I should be grateful if you would have this letter circulated as a document of the General Assembly, under item 155 of the preliminary list, and of the Security Council.

(Signed) Samir MOUBARAK
Ambassador
Permanent Representative

UNITED NATIONS **S**

Security Council

Distr.
GENERAL

S/1997/188
4 March 1997

ORIGINAL: ENGLISH

LETTER DATED 4 MARCH 1997 FROM THE CHARGE D'AFFAIRES A.I. OF THE PERMANENT MISSION OF YUGOSLAVIA TO THE UNITED NATIONS ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

In connection with the consideration by the Security Council of the report of the Secretary-General on the United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium (UNTAES) (S/1997/148), upon the instructions of my Government I have the honour to inform you of the following:

On the eve of the elections, the situation in Eastern Slavonia, Baranja and Western Sirmium is becoming ever more uncertain and tense. This has been brought about by the inconsistent application and even outright flouting by the Croatian Government of its commitments under the Basic Agreement, relevant Security Council resolutions, presidential statements and its own oral guarantees to the Transitional Administrator and the commitments it has given in its letter of intent of 13 January 1997. This gives little cause to the local Serbs to believe that Croatia is willing to integrate the region in accordance with the said provisions and leads them to leave the region in an ever greater number.

As regards the upcoming elections, which are the centrepiece of the Basic Agreement, the Federal Republic of Yugoslavia has always supported the view of the Security Council that their organization and holding is the charge of UNTAES and that they should be made contingent on the assessment that conditions have concurred for them to be free and fair.

It would be improper for the Security Council to put pressure on the local Serbs to collect the necessary election documents and fully participate in the elections at a time when the Secretary-General says in his report that the issuance of documents by the Croatian Government is irregular and uneven. The Secretary-General goes on to say that "psychological harassment from the Croatian side in the form of television and media propaganda, telephone calls and hate mail undermines confidence" of the local Serbs. The Special Rapporteur of the Commission on Human Rights on the situation of human rights in the former Yugoslavia, Ms. Elisabeth Rehn, has also said that the Croatian Government is not issuing the necessary documents to the local Serbs, while many

non-governmental organizations from the field are warning that Croatian offices in the region are deliberately delaying issuance of those documents.

Of particular concern is the fact that the rights of about 500,000 Serbs from Krajina and Western Slavonia, 350,000 of whom have found refuge in the Federal Republic of Yugoslavia, are being totally ignored, and the Security Council has not obligated Croatia to allow them to participate in the election process as well. It is certainly hard to explain this approach to the issue by the Security Council, in the light of the statement made by the Presidency of the European Union on 11 February 1997 (A/52/78-S/1997/133, annex) to the effect that "the European Union also reaffirms the right of the Serbian refugees from Croatia at present living in neighbouring countries to obtain citizenship, return safely and participate in future elections". This stance is corroborated by the United States Ambassador to Croatia, Mr. Peter Galbraith, who recently said that the Croatian authorities were making a serious mistake in not allowing the return of the Serbs who had lived in Croatia.

Croatia has imposed numerous administrative obstacles on the return of Serbian refugees, both at its office in Zagreb and at its Embassy in Belgrade. This proves beyond any doubt that Croatia promises one thing while in reality it does quite the opposite. Not only does such policy prevent the return of Serbs to their ancestral homes, but it also puts pressure on the remaining Serbs in Eastern Slavonia to leave the region.

The anxiety of the Serbs and the root cause of their increasing departure from Eastern Slavonia are to be found in the general perception that the intention and final objective of the Zagreb authorities is to ethnically cleanse Croatia of Serbs. The question of the confidence of the Serbs in Eastern Slavonia is inseparable from the policy and practice of Croatia towards its Serbian population forced to flee their homeland. In order to earn the trust of the local Serbs, Croatia must effectively assure the return of Serbian refugees from other parts of Croatia and allow them to participate in the local elections. The attempts to cloud the real cause of, and shift the responsibility for, the deteriorating situation in the region onto some elements of the Serbian community, which are allegedly creating an atmosphere of uncertainty, are therefore incorrect and unhelpful. Such an attitude will only encourage Croatia to continue its double-track policy.

Proceeding from the above, and taking into account the increasing tension in the region owing to the failure of the Government of Croatia to earn the necessary trust of the Serbs of the region and the continued resistance of Croatia to accept the return of a substantial number of refugees, it is incumbent on the Security Council to adopt a relevant resolution, as hitherto the presidential statements have, unfortunately, proved less than effective.

The Security Council resolution should contain the following elements:

(a) A request that Croatia accept the justified demands of the local Serbs concerning the administrative structure of the region, preventing the fragmentation of the Serbian community and guaranteeing its lasting protection and effective participation in the future administration of the region;

(b) The Security Council should call upon the Government of Croatia to apply the Amnesty Law fairly and consistently to all persons subject to its jurisdiction. Croatia should be prevented from continuing its policy of intimidation of the Serbian population;

(c) The Security Council should make it quite clear that the organization and holding of local elections in the region is under the exclusive jurisdiction of UNTAES and that Croatia has neither direct nor indirect influence;

(d) The United Nations Transitional Administrator should ensure direct control of the process of the issuance of documents necessary for the elections, as well as the control of all statistical data vital for the assessment that the conditions have been created for free and fair elections;

(e) A demand that Croatia urgently issue relevant election documents to all the Serbs from Croatia, both residents of the region and the refugees and displaced persons who have found refuge either in the Federal Republic of Yugoslavia, the Republic of Srpska or in other countries in Europe;

(f) The principle that the holding of the elections is dependent on the assessment that conditions have concurred for them to be free and fair must be upheld;

(g) The right of the Serbian refugees from Croatia to participate in the elections should be reaffirmed. The Organization for Security and Cooperation in Europe (OSCE) and other international organizations should be called upon to provide logistical and other assistance, as was the case in Bosnia and Herzegovina;

(h) Croatia should allow the free and safe return of all refugees and displaced persons under the supervision of relevant international organizations, primarily the Office of the United Nations High Commissioner for Refugees (UNHCR);

(i) The Security Council should call upon OSCE and relevant governmental and non-governmental organizations to set up an adequate and lasting monitoring network for Eastern Slavonia, Krajina, Western Slavonia and other areas in Croatia in which the Serbs lived and to which they are expected to return in substantial numbers.

We expect that by adopting such a resolution the Security Council will exert more effective influence on Croatia to implement consistently and fully, under the control of the Security Council, the commitments it has taken unilaterally, in its letter of intent or orally to the Transitional Administrator, or has been obligated to by the Basic Agreement and the relevant resolutions and other decisions of the Security Council.

I should be grateful if you would kindly have this letter circulated as a document of the Security Council.

(Signed) Vladislav JOVANOVIC
Chargé d'affaires a.i.

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General Assembly
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4 March 1997

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GENERAL ASSEMBLY
Fifty-first session
Agenda item 56
THE SITUATION IN BOSNIA
AND HERZEGOVINA

SECURITY COUNCIL
Fifty-second year

Letter dated 3 March 1997 from the Permanent Representative of Bosnia and Herzegovina to the United Nations addressed to the Secretary-General

It has come to the attention of my Mission that a letter dated 2 January 1997 has been forwarded to your office by Ms. Biljana Plavsic, in her capacity as the President of Republika Srpska, of Bosnia and Herzegovina.

By the protocol of the United Nations, that official communication, as well as the communication in response, should have come through our office since Republika Srpska is an entity of Bosnia and Herzegovina. We would be most pleased to forward any such communications in the future regardless of their content; and because of the sensitivity of this situation in my country and its dangerous implications, we would request that any such communications be returned for proper routing.

The Legal Counsel has responded to Ms. Plavsic's letter properly, through our office regarding the obligations of all parties, including all political subdivisions within Bosnia and Herzegovina, to comply fully with the International war crimes Tribunal and its orders. We concur with the content of that analysis and would like to emphasize further that full compliance is also mandated by the new Constitution of Bosnia and Herzegovina and the Dayton/Paris Accords as well as international law and the relevant resolutions of the Security Council. We believe it is our responsibility to clarify any potential misunderstanding regarding the international commitments of Bosnia and Herzegovina, including by incorporation those of any political subdivision within Bosnia and Herzegovina. Clearly our Constitution and international law must take precedence.

In view of the interest of the Security Council in this issue and its potential consequences and implications for the peace process, may we request that Ms. Plavsic's letter dated 2 January 1997 and the response of the Legal

Counsel of 21 January 1997 be circulated along with the present letter as an official document of the General Assembly, under item 56, and of the Security Council.

In addition, may we request information regarding any follow-ups by Ms. Plavsic or other officials of Republika Srpska to the response of the Legal Counsel and the many demands by the Security Council for full compliance with the Tribunal and its orders.

(Signed) Muhamed SACIRBEY
Ambassador and Permanent Representative
of Bosnia and Herzegovina
to the United Nations

ANNEX I

Letter dated 2 January 1997 from Ms. Biljana Plavsic addressed to the Secretary-General

I would like, first of all, in my capacity as President of Republika Srpska, to wish you the greatest success in the New Year at your new post. The moderation and balance that graced your work in the former Yugoslavia make us confident that the United Nations will be in good hands, equitably serving the interests of all the world's nations.

Unfortunately, because of the difficult post-war situation, Republika Srpska and Bosnia and Herzegovina will continue to be in the focus of the United Nations. This being the case, I think that it will be most helpful to you if you were informed about the position of Republika Srpska regarding one of the most sensitive issues in the Bosnian political milieu - the issue of war crimes as pursued by the International war crimes Tribunal in The Hague. It is an issue that will need clarification if things are to move forward in Bosnia and Herzegovina.

You will find enclosed herein the view of Republika Srpska which is our contribution to the clarification and, perhaps, the resolution of this highly charged and difficult issue. I shall be pleased to respond to any questions you may have regarding our view or the issue at-large, as well as to receive your comments and opinions.

(Signed) Biljana PLAVSIC
President of Republika Srpska

APPENDIX

Position of Republika Srpska regarding the International Tribunal for the former Yugoslavia

As President of Republika Srpska, I consider it particularly important to acquaint you with my position and the position of Republika Srpska regarding the work of the International Tribunal for the former Yugoslavia in The Hague and, specifically, the issue of the handing over of Dr. Radovan Karadzic and General Ratko Mladic to the Tribunal. This is a matter to which we have given considerable thought since the London Conference, on 4 and 5 December 1996, especially in the light of the high level of attention given to this issue there. It is also a matter on which we have sought legal advice.

The present position of Republika Srpska is that we are unwilling to hand over Dr. Karadzic and General Mladic for trial in The Hague as we believe that any such trial now falls outside the scope of the Tribunal's constitutional framework.

I will now elaborate our position:

(a) As you are of course aware, the United Nations Security Council established the Tribunal as an enforcement measure under Chapter VII of the Charter of the United Nations after finding that violations of international humanitarian law had occurred in the former Yugoslavia which constituted a threat to peace;

(b) In making this finding, the Security Council acted under Article 39 of the Charter, which provides that:

> "The Security Council shall determine the existence of any threat to peace ... and shall make recommendations or decide what measures shall be taken in accordance with Articles 41 and 42 to maintain or restore international peace and security."

(c) We also understand that during the course of the Tadic trial, the Tribunal gave a judgement stating that pursuant to Article 41, the setting up of the Tribunal did fall within the range of steps, not involving the use of armed force, which could be employed for the purpose of restoring and maintaining peace;

(d) We further note that at the time the Security Council resolved to establish the Tribunal, the war in Bosnia and Herzegovina was at its height. This fact is reflected in both resolutions 808 (1993) of 22 February 1993 and 827 (1993) of 25 May 1993. In resolution 808 (1993), the Security Council expressed "Its grave alarm at continuing reports of widespread violations of international humanitarian law occurring within the territory of the former Yugoslavia."; and in resolution 827 (1993), in similar terms, it expressed its grave alarm at continuing reports of widespread and flagrant such violations "especially in the Republic of Bosnia and Herzegovina, including reports of mass killings, massive organized and systematic detention and rape of women and the

continuance of the practice of 'ethnic cleansing', including for the acquisition and the holding of territory". In both resolutions, it is determined "that this situation continues to constitute a threat to international peace and security";

(e) In our view - and this matter has been discussed at the highest political levels in Republika Srpska - the situation referred to in resolutions 808 (1993) and 827 (1993) no longer continues to exist. Whether or not the reports mentioned in resolution 827 (1993) were true and accurate at the time, we do not believe that there are now any reports of mass killings, systematic detention, rape of women or ethnic cleansing. Since the signing of the Dayton Agreement, the situation in Bosnia and Herzegovina has changed fundamentally and peace has been restored. In the opinion of the authorities of Republika Srpska and as far as the Bosnian Serbs are concerned, there is no longer any threat to the peace. To this extent, therefore, the constitutional basis for establishing the Tribunal under Chapter VII, Articles 39 and 41, has disappeared;

(f) This leaves the question of whether the trials of Dr. Karadzic and General Mladic in particular are required for the maintenance of peace in Bosnia and Herzegovina. We think that the answer to this question is clearly in the negative;

(g) In this context, we would reiterate that the authorities of Republika Srpska have no intention or desire to reignite hostilities in Bosnia and Herzegovina. We would add that, from the information available to us, neither have the Muslim and Croat authorities in the Federation any such desire at present and to the extent that they might ever have in mind to recommence hostilities against the Serbs in the future, this would stem from their dissatisfaction with the territorial divisions specified by the Dayton Agreement rather than from whether Dr. Karadzic and General Mladic are handed over for trial in The Hague. Indeed, it is strongly arguable that it is the instability of the Federation which currently presents the biggest threat to continued peace in Bosnia and Herzegovina. If the Muslims and Croats were at some stage in the future to start fighting each other again (as in 1993 when the Tribunal was set up), Dr. Karadzic and General Mladic would bear no responsibility for this; nor would their trial cure the problem;

(h) We would go further. It is our firm belief that if we were to hand over Dr. Karadzic and General Mladic for trial, this would in fact threaten the existing peace. We believe that massive civil and military unrest would result in Republika Srpska which might well prove uncontrollable by the civil authorities and for the consequences of which we would not wish to be held accountable. The people of Republika Srpska, it must be appreciated, do not want Dr. Karadzic and General Mladic to be surrendered and to do so would undermine all the efforts which we have made during the last year with the assistance of the international community to establish peace in Bosnia and Herzegovina. If we were to hand over Dr. Karadzic and General Mladic, the universal feeling among the population in Republika Srpska would be that we as their elected civil representatives had betrayed their trust, provoking an almost certain violent backlash against the Government in Republika Srpska, the Federation and the international community. The chances of fighting restarting would, in our judgement, be high. These would be even higher were any attempt

made to hunt down Dr. Karadzic and General Mladic and forcibly bring them to trial;

(i) For the above reasons we believe that there is no longer any basis within the constitutional framework of Chapter VII of the Charter of the United Nations giving the Tribunal jurisdiction to try Dr. Karadzic and General Mladic;

(j) We would add that another of our concerns, in this context, is that we have been advised that, in law, a determination by the Security Council under Article 39 of the existence of any threat to the peace is not reviewable by a Court including the Tribunal. There is thus, we are disappointed to note, no framework in principle by which the validity of our contentions as outlined above can be tested independently and judicially should they be disputed. We have been referred in the Tadic trial and to the Lockerbie case (Libyan Arab Jamahiriya v. United States of America, I.C.J. Reports 1992, p. 114) decided by the International Court of Justice;

(k) The law appears to be, in a nutshell, that the invocation of Article 39 is not a justiciable issue but rather "one involving considerations of high policy and of a political nature" (Tadic judgement, para. 23). In our view, these are best taken by those politicians on the ground closest to the situation, and we reiterate that our firm conclusion is that the conditions for the applicability of Article 39 no longer exist, nor does "the situation" set out in resolutions 808 (1993) and 827 (1993).

Turning to a wholly different matter, a further reason why we are unwilling to hand over Dr. Karadzic and General Mladic is that we view a trial of these two men as an abuse of the process. Such has been the overwhelming and worldwide level of adverse publicity given to Dr. Karadzic and General Mladic that we are of the opinion that there will be scarcely a single individual outside the former Yugoslavia (other than those with Serb sympathies) whose mind has not already been poisoned into regarding them as "war criminals". We would pose the question to anyone who reads this letter: do you regard Dr. Karadzic and General Mladic as "war criminals"? Even though, publicly, the reader might answer "that is a matter for the Tribunal to decide on the evidence", having consulted widely, we are of the view that, privately, Dr. Karadzic and General Mladic are assumed to be guilty of the allegations against them and that any trial is merely a formality to assuage the conscience of the international community, as well as a means of securing purely political objectives.

It is our opinion that this perception of bias applies equality to the judges of the Tribunal. I will illustrate this point with some examples. In 1995, Professor Cassese, the Tribunal President, called for a "programme of indictments" to "meet the expectations of the Security Council and of the world community at large". This is hardly the language of an independent judge whose duty is not to act as an avenging angel but to do justice though heavens fall.

Again, earlier this year, Professor Cassese urged the postponement of the Bosnian elections until Dr. Karadzic and General Mladic had been arrested and also urged that Serbia should be expelled from the Olympic Games in Atlanta unless it helped to arrest the two men. These remarks suggest a prosecutorial zeal which, again, is wholly inappropriate coming from the president of an

allegedly impartial Tribunal. I believe that his fellow judges share his views and that he speaks for all of them in his public statements.

It was, further, our opinion at the recent London Conference that the political and partial involvement of the Tribunal judges was once again displayed in their overt dissatisfaction with the role allotted to them as observers. A deeper participatory role such as they seemed to crave would have been, in our view, wholly inconsistent with their function - to ensure a fair and impartial trial within accepted legal, procedural and evidential principles.

If, as we think, Dr. Karadzic and General Mladic would not receive a fair trial because of the almost universal assumption of their guilt, a further adverse consequence of this is that the normal burden of proof in a criminal trial, i.e. that it is for the prosecution to prove guilt, not for the defendant to prove his innocence, would in effect be reversed. We do not regard it as right and proper to subject Dr. Karadzic and General Mladic to a trial in these circumstances.

I stress that I have written this letter not out of any desire to be uncooperative with the Tribunal and the international community but because the political leadership of Republika Srpska cannot in all conscience accept that we should be parties to a step which would likely threaten the peace which so many of us have striven so hard to establish in the last year and which would submit Dr. Karadzic and General Mladic to an unfair trial by judges whose primary concern is to meet the expectations of the international community, i.e. to convict them.

Neither Dr. Karadzic nor General Mladic any longer hold any public office, nor is it our intention that they should do so in future. We believe that the continued maintenance of peace in Bosnia and Herzegovina is best served by accepting this state of affairs and by looking forward positively towards rebinding the economy and the industrial infrastructure of the country. The prosecution of Dr. Karadzic and General Mladic would only hinder that process.

(Signed) Biljana PLAVSIC
President of Republika Srpska

ANNEX II

Letter dated 21 January 1997 from the Under-Secretary-General for Legal Affairs, The Legal Counsel, addressed to the Minister for Foreign Affairs of Bosnia and Herzegovina

On 2 January 1997, Mrs. Biljana Plavsić, the President of Republika Srpska, addressed to the Secretary-General a letter in which she set out the position of her Government regarding the surrender of Dr. Karadžić and General Mladić to the International Tribunal to stand trial.

In her letter, Mrs. Plavsić argues that the trial of the two accused, if surrendered to the International Tribunal, would now fall "outside the scope of the Tribunal's constitutional framework". In support of this argument, Mrs. Plavsić advances a variety of reasons having to do with the legality of the establishment of the International Tribunal and its continued existence, the effects of the surrender of the two accused on the maintenance and restoration of peace in the former Yugoslavia, the validity of the Council determination of the existence of a threat to international peace and security and the justiciability of such determination, and the prospects of ensuring a fair trial of the two accused before the International Tribunal.

In view of the fact that Republika Srpska is not a State, the Secretary-General has requested that I convey to you as the Minister for Foreign Affairs of Bosnia and Herzegovina the position of the United Nations with regard to the legal basis for the establishment of the International Tribunal, and the legally binding nature of the obligation to cooperate with the Tribunal and comply with its requests, including, in particular, the obligation to surrender persons accused of having committed crimes falling within the jurisdiction of the Tribunal. Arrangements have been made to deliver a copy of the present letter to Mrs. Plavsić.

As you will recall, the parties to the Dayton Agreement have undertaken to cooperate fully with all entities involved in implementation of the peace settlement, as described in the annexes to the Agreement, or which are otherwise authorized by the United Nations Security Council (article IX of the General Framework Agreement for Peace in Bosnia and Herzegovina). In addition, the Constitution of Bosnia and Herzegovina prescribes that all competent authorities shall cooperate with and provide unrestricted access to the International Tribunal for the former Yugoslavia; in particular, they shall comply with orders issued pursuant to article 29 of the statute of the Tribunal.

The International Tribunal was established by the Security Council in its resolutions 808 (1993) and 827 (1993), under Chapter VII of the Charter of the United Nations. The establishment of the International Tribunal under a Chapter VII resolution entails for all States Members of the United Nations a legally binding and enforceable obligation to comply, and take whatever actions are required to carry out that decision. This obligation is further specified in article 29 of the statute of the International Tribunal which provides that States shall cooperate with the Tribunal in the investigation and prosecution of persons accused of committing serious violations of international humanitarian

law, and shall comply without undue delay with any request for assistance issued by the Tribunal, including the surrender or the transfer of the accused to the Tribunal. A request for the surrender or transfer of an accused when emanating from the International Tribunal is, therefore, an enforcement measure taken pursuant to Chapter VII of the Charter of the United Nations.

The legal basis for the establishment of the International Tribunal and its continued existence is challenged by Mrs. Plavsić on the ground that the threat to peace and security which existed at the time of its establishment has ceased to exist, and with it the constitutional basis for the Tribunal itself. This argument runs counter to the principle that the legality of the establishment of the International Tribunal, as an enforcement measure under Chapter VII of the Charter, must be determined in the light of the circumstances prevailing at the time of its establishment, that is May 1993, and not according to the changing circumstances. It also disregards the fact that the determination of the Council was premised on the conviction that a threat to international peace and security exists not only for the duration of the armed conflict, but as long as serious violations of international humanitarian law continue to occur and those responsible for such violations are not brought to trial. Furthermore, the fact that serious violations of international humanitarian law have ceased to exist may be true, but does not affect the temporal jurisdiction of the Tribunal with regard to such violations committed in the context of the armed conflict in the territory of the former Yugoslavia since 1991, as is clearly supported by the Dayton Agreement. In conclusion, the legal basis of the International Tribunal was firmly established at the relevant time and thus cannot be invalidated by the subsequent restoration of peace; its continued validity rests, among others, on its contribution to the maintenance of peace.

Mrs. Plavsić also contends that the trial of the two accused is not required for the maintenance of peace in Bosnia and Herzegovina, and in fact, if pursued, is likely to threaten the peace and result in uncontrolled and massive civil and military unrest. The question of whether or not the surrender and trial of the accused will contribute to the maintenance of peace, or rather threaten its existence, is not a legal question, but one of perception. In establishing the International Tribunal the Security Council was guided by the concept that a real and lasting peace can only be achieved in the former Yugoslavia if justice is done to both those who were victimized and those who perpetrated criminal acts. As stated by the Secretary-General in his report of 3 May 1993 (S/25704), it was the conviction of the Council at the time of the establishment of the International Tribunal that in the particular circumstances of the former Yugoslavia such a measure would contribute to the restoration and maintenance of peace. This conviction is still valid today and will remain so for as long as justice is not done in the former Yugoslavia.

Mrs. Plavsić further argues that since the determination of the Security Council that a threat to international peace and security exists is not justiciable before the International Tribunal or any other jurisdiction, there is no forum before which the validity of the contentions of Republika Srpska can be examined. Indeed, a determination of the Council of the existence of a threat to international peace and security is not justiciable before any jurisdiction. It is for the Security Council to determine whether and what type of enforcement measures under Chapter VII of the Charter are necessary to bring

about peace and security. In the light of the judicial nature of the International Tribunal, it is clear that any such determination would not affect ongoing legal proceedings or the obligation to surrender persons accused of having committed serious violations of international humanitarian law while the armed conflict was still ongoing.

And finally, the International Tribunal, as the representative of the international community as a whole, is a guarantee of an independent, impartial and fair trial for all accused individuals. The statute of the International Tribunal and the Rules of Procedure and Evidence by which it is bound are an expression of the highest standards of human rights and due process of law, and a built-in guarantee for the rights of the accused.

In consideration of the foregoing, it is the position of the United Nations that unconditional cooperation with the International Tribunal is imperative, and that the Republika Srpska should surrender Dr. Karadžić and General Mladić, as well as all other accused within that Entity to the International Tribunal to stand trial.

(Signed) Hans CORELL
Under-Secretary-General for Legal Affairs
The Legal Council